

**(III) IMPORTANT JUDGEMENT CONCERNING THE STATUS OF
SEIZED PROPERTY - QUESTION OF LAW UNDER SECTION (39)
OF WILDLIFE (PROTECTION) ACT, 1972**

- Order of Hon' Metropolitan Magistrate, Chennai
- Order from Hon' High Court of Madras.

**◆ IN THE COURT OF XVI METROPOLITAN MAGISTRATE GEORGETOWN,
CHENNAI-1**

Present : Thiru. V.S. Kumarsean, B.A., B.L.,

XVI Metropolitan Magistrate.

Crl.M.P.No. 4922 of 2003

Crl.M.P.No. 732 of 2003

Friday, the 30th day of April, 2004

M/S Transcoastal Cargo & Shipping Service Pvt.Ltd.,
Rep. by its Director "Catholic Centre", 1st Floor
Chennai-1.

Petitioner/Respondent

Vs.

The Inspector (Wild Life Preservation),
Wild Life Regional Office (S.R),
Govt. of India Ministry of Environment & Firests
C.2A Rajaji Bhavan, Chennai-90

Respondent/Petitioner

This petition is coming up before me for hearing in the presence of M/s Shanthi Vinayagam and E. Nelson Nomoha for the petitioner and Tr.N. Muralikumaran, Addl. Central Govt. standing counsel for the respondent and on hearing the arguments of both the sides, this court delivers the following.

ORDER

This is an application filed by the petitioner C/s 451 of Cr. P.C for the return of the property namely container bearing No. LL. C.U. 504256-4.

On 12-3-04 an order for production of the container before this court was passed. However the respondent herein contended that the said containers could not be produced before this court. In view of its voluminous nature and it was further contended that an intimaion about the seizure of the property was sent to this court and that itself is sufficient and satisfy the requirement of section 50(4) of the wildlife protection Act, 1972. To support his contention, the counsel for the respondent relied on an unreported judgement of Hon'ble High Court of Madhya Pradesh Bench at Gwalior in State of M.P. through Director, Madhav National Park, Shivpuri Versus Asad Amin Wherein it has been observed as follows.

Section 2 (14) of the act defines the Govt. Property which means a property referred to in section 39. Therefore, Magistrate before whom seized property produced has to deal with according to law. Since the

property has become Govt. Property the Magistrate loses jurisdiction to deliver the property. The meaning can be drawn from the phrasology" according to law. The question has been considered by the Bench of this court in the case of State of M.P Vs. Ali reported in 1895 MPLJ - 791. It has been held that section 39 of the Act as amended 1991, clearly lays down that any vehicle seized which is involved in the offence under the provision of the act shall be the property of the State Government. Accordingly as a consequence of amendment in section 39 of the Act, Section 50 of the act has also been amended whereby power of returning the vehicle seized by the officials has been withdrawn, in such circumstances. Once the property has become the property of the State, no orders for delivery of property could be passed. Similar is the provision in section 52 (a) of the Forest Act where intimation of seizure is sent to Magistrate but Magistrate has no jurisdiction to dispose of the seized goods, therefore the Magistrate has no Jurisdiction release, the property on supurdnama. This view has been taken by the single Bench of this court in case of Laxmichand V. State of M.P. reported in 1995 JLJ746.

Further the counsel for the respondent relied on the unreported judgement of Hon'ble Apex court in Spl.L.P.(crl.) No.233/00 in State Karnataka Vs. Krishnan dated 17-8-2000. The said judgement was rendered in a matter of return of vehicle involved in the offence under forest Act. The Apex court refused to order return of the vehicle by observing that "we are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party until the culmination of all the proceedings, if any. Any such easy release would made the forest offences to repeat commission of such offences" Citing the said judgement, the counsel for the respondent drawn analogue between the two enactments the purpose of both being to save the forest and the precious foest animals and living being and pleaded that the container being involved in offence has become property of state and it cannot be ordered to be returned to the petitioner. This court accept the said contention of the respondent.

On the contrary the counsel for the petitioner contented that the petitioner is not the accused in the crime and the irrespect of the property it is having a leasehold right and because of it being kept idle, it is losing its lease hold right over the property and that apart Rs.100/- per day has been charged as demurrages from the petitioner for keeping the container in the dock and thus pleaded for the return of the property. This court is helpless. In view of the non availability of the property before this court, it cannot exercise power U/s 451 to order return of property that too at this stage of the proceeding. This court has no inherent power to order return of property which was not produced before it, and which has become the property of the state on its seizure or to order for the waiver of demurrages which is being collected from the petitioner for keeping the container. Hence in the above circumstances and for the reasons above stated, this application for return of property is dismissed.

//pronounced by me in the open court this the 30th day of April 2004.//

XVI Metropolitan Magistrate.

Examined by:

No. of Pages: 4

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